



State of West Virginia

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ADVISORY MEMORANDUM

TO: All County Sheriffs and Chief Tax Deputies
All County Assessors
State of West Virginia

FROM: Wade Thompson, Director, Property Tax Division
Russ Rollyson, Deputy State Auditor, Land Division
Stuart Stickel, Director, Chief Inspector Division
Joyce Ferreebe, Field Director, Chief Inspector Division

DATE: October 4, 2006

RE: Supplemental Assessment Process/Clarification and New Issues

Ladies and Gentlemen:

We have received numerous comments concerning our Advisory Memorandum dated August 11, 2006. That Advisory Memorandum was designed to provide practical guidance associated with implementing the provisions of Senate Bill 463 which amended West Virginia Code § 11-3-5 and codified the supplemental tax process. Additionally, we have received numerous inquiries associated with the tax assessment and collection process that were not specifically related to the aforementioned amendment. Finally, a number of inquiries were received with respect to the proper procedures associated with delinquent land sales. Rather than reproduce the contents of the previous correspondence dated August 11, 2006, we will address the specific inquiries subsequently received. Therefore, it may be helpful to refer to this previous guidance as it is referenced in pertinent sections throughout this letter. That document is available at <http://www.wvsao.gov/cid/cid.asp>

Section I - Clarification of Previous Advisory Memorandum and New Assessment Issues

1. Can interest and penalties be waived when an assessment is necessary due to a clerical error of the Assessor's Office?

If a corrective ticket or a supplemental, then interest and penalty can be waived by the assessor due to the clerical error. This pertains to the 6% interest and the \$25 to \$100 penalty. The 9% interest cannot be waived.

2. Can the person receive the 2 ½ % discount on a TY2006 supplemental (current)?

Yes, the TY2006 supplemental is a current year ticket subject to the applicable discounts promulgated by West Virginia Code §11A-1-3 based on when the supplemental current year ticket is created. Any current year supplemental assessments created and paid before September 1st would receive the 2½% discount. Any current year supplemental assessments not created and/or paid by April 1st would be considered delinquent.

3. If we create a prior year ticket, are we required to charge publication fees although the delinquency was not published?

No, West Virginia Code §11A-2-11 requires delinquent taxes to be published by May 1st each year. If the ticket is created after the May 1st date, then there would be no publication cost attached to this ticket (See example Two (c) in August 11th Memo).

4. Are there circumstances when a corrective ticket, for real and/or personal taxes, would be issued for a prior year rather than a supplemental assessment?

Yes, West Virginia Code §11-3-27 allows for both real and personal taxes to be corrected when due to a clerical error by either the Assessor or Sheriff. It is our conclusion that a county commission is empowered and authorized to add to the final property books those property owners whose names appeared on the initial assessment rolls but which, due to data entry error, were omitted from the property book turned over to the sheriff. If the taxpayer was not on the original rolls, then a supplemental ticket for motor vehicles or the back tax should be used.

5. A homestead exemption was improperly allowed in the past years for a taxpayer who was not eligible due to an error by the Assessor. How should this be corrected?

West Virginia Code §11-3-27 allows for the issuance of a corrective ticket. A corrective ticket can be created due to the erroneous assessment within one year from the time that the error was discovered or should have been discovered. In this case, a back tax would be appropriate for any prior year's based on the conclusion drawn in item number 4. A corrective ticket would be issued for the current year and treated as any other current ticket.

6. Should we be creating a 2005 ticket at all after July 1, 2006 or should this be created as a 2006 ticket number for a 2005 back tax?

Yes, a 2005 ticket should be created under certain circumstances. For example, West Virginia Code §11-3-27 allows for the correction of prior year taxes, and the creation of a corrective ticket. Additionally, West Virginia Code §11-3-5 allows for the creation of supplemental taxes for the year or years omitted from the books. West Virginia Code §11A-1-3 requires the payment of prior year taxes before current year taxes are collected. Therefore, supplemental or corrective tax tickets (depending on the situation) for a prior year is required under certain circumstances.

7. Does the 9% interest apply to a 2005 supplemental ticket when charged on a TY2006 ticket?

Yes, the 9% interest applies. (See Example 1 in the August 11th memo.)

8. Should a TY2005 supplemental be charged on a TY2006 supplemental ticket or should there be a separate supplemental ticket for TY2005 and TY2006?

There should be separate supplemental tickets for each year for which a ticket is created, as interest penalty, etc. would apply based on the year and the circumstances.

9. When splitting a ticket due to a divorce, how are the various charges such as the publication fee, interest and penalties divided?

Flat fees, such as publication costs and certified letter costs, should be divided evenly between the two tickets. Any interest or penalties that are calculated on assessed values should be prorated based on the new assessed values after splitting the ticket.

Section II - Suspension Issues

1. Should the Sheriff's office be allowed to "unsuspend" a ticket in order to collect?

Yes, in certain instances. Both §11A-3-7 and §11A-3-41 addresses the issue. In §11A-3-7 the county commission can order the sheriff to include the property in the next September delinquent list unless sooner redeemed. In order to be able to offer the property for sale, then by sheer definition the property cannot be suspended. That being the case, the sheriffs' offices must have the capability to unsuspend a property. §11A-3-41 Section B states that *"Between August fifteenth and August thirty-first of each year, the auditor shall report to the sheriff of each county for inclusion in his next September delinquent list all tracts of land redeemed from the auditor, which after certification to the auditor have been reported to him by the sheriff as suspended from sale, if the taxes for the year or years of suspension were not collected by the auditor. The sheriff shall be charged with such taxes and shall account for them as is required in the case of current taxes."*

2. What are examples of suspensions that should be able to be unsuspended?

The primary case is bankruptcies. In many of those instances, it is the sheriff who receives and files documentation with the Bankruptcy Court regarding their claim. The Auditor's Office rarely receives notification of bankruptcies regarding individuals and therefore is not in a position to file a claim with the Courts. The second instance that comes to mind is where property is sold (for example) in tax year 2005 for 2004 taxes. The 2005 taxes should be suspended from the sale. However if the property is redeemed for the 2004 taxes prior to the sale for the 2005 taxes, then the sheriff must be able to collect or be able to sell the property provided that it was advertised.

3. What are examples of suspensions that should not be unsuspended?

The primary case being property that the tax lien was sold previously and not redeemed.

4. If there is a question, what should be done with respect to suspension issues?

The Auditor's Office recognizes that there may be situations not specifically addressed in the examples above. In those instances please contact the County Collections Division of the West Virginia State Auditor's Office at 888-509-6568 for guidance.

Section III -Tax Sale Issues

1. Can mineral interest be offered for sale by the sheriff?

Yes, provided that it is listed on the real estate land books.

2. Can royalty interest or a building on leased acreage be offered for sale?

No, the West Virginia Supreme Court stated in Morrie Blair, et al. v. Freeburn Coal Corporation, etc., et al., that under §36-1-1 of the West Virginia Code, real property can be conveyed only by deed or will. Furthermore, under §2-2-10 of the West Virginia Code," The word "land" or "lands" and the words "real estate" or "real property" include lands, tenements and hereditaments, and all rights thereto and interests therein except chattel interests..." Personal property erroneously entered upon the land books as real property constitutes a void assessment and can serve as no valid basis for the sale thereof by the Commissioner of Delinquent and Nonentered Land or Sheriff.

3. Can a person receive a deed to a royalty interest as a result of a land sale?

A deed made pursuant to a delinquent land sale under a void assessment is void.

To all County Sheriffs and Chief Tax Deputies
To all County Assessors
State of West Virginia
October 4, 2006
Page Five

4. What is an example of personal property taxed on the real property tax books?

In Morrie Blair, et al. v. Freeburn Coal Corporation, etc., et al., a coal tipple, constructed on the land of another under an agreement permitting such construction, the ownership of which is retained by the builder or by such party to whom he may transfer it by bill of sale, is personal property and should be assessed as such on the personal property books.

ADDITIONAL RELEVANT WEST VIRGINIA CODE SECTIONS

Section I - Clarification of Previous Advisory Memorandum and New Assessment Issues

§11-3-27. Relief in county commission from erroneous assessments.

(a) Any taxpayer, or the prosecuting attorney or tax commissioner, upon behalf of the state, county and districts, claiming to be aggrieved by any entry in the property books of the county, including entries with respect to classification and taxability of property, resulting from a clerical error or a mistake occasioned by an unintentional or inadvertent act as distinguished from a mistake growing out of negligence or the exercise of poor judgment, may, within one year from the time the property books are delivered to the sheriff or within one year from the time such clerical error or mistake is discovered or reasonably could have been discovered, apply for relief to the county commission of the county in which such books are made out: *Provided*, That upon the discovery of any such clerical error or mistake by the sheriff or assessor, or either officer having knowledge thereof, the sheriff or assessor shall initiate an application for relief from the erroneous assessment on behalf of the taxpayer or cause notice to be sent to any taxpayer affected by the clerical error or mistake by first-class United States mail advising the taxpayer of the right to make application for relief from the erroneous assessment. Before the application is heard, the taxpayer shall give notice to the prosecuting attorney of the county, or the state shall give notice to the taxpayer, as the case may be. The application, whether by the taxpayer or the state, shall have precedence over all other business before the court; but any order or judgment shall show that either the prosecuting attorney or tax commissioner was present defending the interests of the state, county and districts: *Provided, however*, That the provisions of this section shall not be construed as giving county commissions jurisdiction to consider any question involving the classification or taxability of property which has been the subject matter of an appeal under the provisions of section twenty-four-a of this article; and any other such clerical error or mistake involving the classification or taxability of property, may be corrected by the county commission under the provisions of this section only when approved, in writing, by the county assessor.

(b) In the event it is ascertained that the taxpayer is entitled to relief, any excess taxes already paid shall be refunded and, if charged but not paid, the applicant shall be released from the payment of such excess: *Provided*, That in the event a mistake or error is discovered more than one year after the property books for the year or years in question are delivered to the sheriff, any relief granted to the taxpayer shall be in the form of a credit against taxes owing for up to the following two years: *Provided, however*, That if there are insufficient future taxes to credit or if the sheriff or county commission determines that a refund is appropriate, then the sheriff or county commission shall refund the uncredited balance to the taxpayer. (c) Whenever any correction is made by the county commission, the clerk shall certify copies of the order to the auditor, sheriff and assessor, and in the case of real estate, the assessor shall thereupon make a correction in accordance with the order in his or her landbook for the next year. Any such order delivered to the sheriff or other collecting officer shall restrain him or her from collecting so much as is erroneously charged against the taxpayer, and, if already collected, shall compel him or her to refund the money if such officer has not already paid it into the treasury. In either case, when endorsed by the person exonerated, it shall be sufficient voucher to entitle the officer to a credit for so much in his or her settlement which he or she is required to make. If the applicant is the state, the order certified to the sheriff shall show the correct amount of taxes due the state, county and districts and shall be sufficient to authorize collection in the same manner as for other state, county and district taxes.

§ 11A-3-7. Suspension from sale; amended delinquent lists; subsequent sale.

(a) Whenever it shall appear to the sheriff that any real estate included in the list has been previously conveyed by deed and no tax thereon is currently delinquent, or that the tax lien thereon has been sold previously and not redeemed, or that the tax lien thereon ought not to be sold for the amount stated therein, he shall suspend the sale thereof and report his reasons therefor to the county commission and to the auditor. If the commission finds that the tax lien on the real estate ought not to be sold, it shall so order; but if the commission finds that the tax lien on the real estate ought to be sold for the amount stated, or for a greater or less amount, it shall order the sheriff to include such real estate in his next September list, unless sooner redeemed.

(b) In the event the list and notice of sale prescribed in section two [§ 11A-3-2] of this article is not published, posted and completed in the manner provided by said section two, so that it is impossible for that reason, or by reason of omission of any necessary procedural act, for the sheriff to make sale of the tax lien for the real estate embraced in said list pursuant to the provisions of this chapter, then and in that event the sheriff shall certify to the auditor, on or before the second day of December following the month in which such sale should have been held, an amended list or lists of such taxes which then remain delinquent. The sheriff shall include the real estate in the last-mentioned amended list or lists in his next September list, unless sooner redeemed.

§ 11A-3-41. Auditor to report redemptions to county officers; disposition of redemption money; credit of state taxes to proper fund.

(a) The auditor shall report monthly to the sheriff, the assessor and the clerk of the county commission of each county all land in such county which was redeemed in his office during the preceding month. The assessor shall enter the fact of such redemption in the land book in his office. The clerk shall file and index the report in a separate volume provided for the purpose.

(b) Between August fifteenth and August thirty-first of each year, the auditor shall report to the sheriff of each county for inclusion in his next September delinquent list all tracts of land redeemed from the auditor, which after certification to the auditor have been reported to him by the sheriff as suspended from sale, if the taxes for the year or years of suspension were not collected by the auditor. The sheriff shall be charged with such taxes and shall account for them as is required in the case of current taxes. Instead of making this report, the auditor may collect the taxes due for the year or years of suspension. Upon collection thereof he shall issue a second certificate of redemption, and such certificate shall be a release of the state's lien for such taxes.

(c) The auditor shall each month draw his warrant upon the treasury, payable to the sheriff of each county, for that part of the taxes, interest and charges received by him upon the redemption of the property included in his report, which was owing to any of the taxing units in such county. The sheriff shall account for and pay over such money as if it had been paid to him for redemption before sale.

Upon collection of delinquent taxes due the state, the auditor shall credit them to the proper fund.

§11A-2-10. Sale of tax liens on real estate.

In addition to the methods for the collection of taxes provided for in this article, tax liens on real estate may be sold for the taxes assessed thereon in the manner prescribed in article three of this chapter.

§11A-3-5. Sale by sheriff; immunity; penalty; mandamus.

(a) The tax lien on each unredeemed tract or lot, or each unredeemed part thereof or undivided interest therein shall be sold by the sheriff, in the same order as set forth in the list and notice prescribed in section two of this article, at public auction to the highest bidder, between the hours of nine in the morning and four in the afternoon on any business working day after the fourteenth day of October and before the twenty-third day of November: *Provided*, That no tax lien for such unredeemed tract or lot or undivided interest therein shall be sold upon any bid or for any sum less than the total amount of taxes, interest and charges then due: *Provided, however*, That at any such sale, the tax lien for each unredeemed tract or lot, or undivided interest therein, shall be offered for sale and sold for the entirety of such tract or lot or undivided interest therein as the same is described and constituted as a unit or entity in the list and notice prescribed in section two of this article. If the sale shall not be completed on the day designated in the notice for the holding of such sale, it shall be continued from day to day between the same hours until disposition shall have been made of all the land. The payment for any tax lien purchased at a sale shall be made by check or money order payable to the sheriff of the county and delivered before the close of business on the day of the sale. (b) Each sheriff is immune from liability if a loss or claim results from the sale of a tax lien conducted pursuant to the provisions of this article or from any subsequent conveyance of the property to which the lien attaches: *Provided*, That where a sheriff fails or refuses to sell said tax lien pursuant to the provisions of this article for reasons other than those provided by section seven of this article, the sheriff may be compelled by mandamus to sell the same upon the petition of the auditor or any taxpayer of the county in a court of competent jurisdiction.